

1 P. GERHARDT ZACHER (SBN: 043184)
 2 KRISTIN N. REYNA (SBN: 211075)
 3 GORDON & REES LLP
 4 101 W. Broadway
 5 Suite 2000
 6 San Diego, CA 92101
 Telephone: (619) 696-6700
 Facsimile: (619) 696-7124
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 8 Attorneys for Third-Party Defendant
 9 COOPER INDUSTRIES, LTD.

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 11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA

13
 14 ESTATE OF VIOLA B. SPAULDING; } CASE NO. C 08-00672 CRB
 15 FLORENCE SPAULDING, trustee; LYNN }
 16 SPAULDING, doing business as Spaulding } AMENDED ANSWER OF
 Enterprises; and TINA SPAULDING } COOPER INDUSTRIES, LLC
 17 WARD, doing business as Spaulding } TO THIRD PARTY
 Enterprises, THE CONSERVATORSHIP OF } COMPLAINT OF MARTIN
 18 EILEEN SPAULDING } FRANCHISES, INC.
 Plaintiff,
 vs.
 YORK CLEANERS, INC., a dissolved }
 California corporation; ESTATE OF }
 BARNARD LEWIS, DECEASED; DAVID }
 VICTOR LEWIS, an individual; MARTIN }
 FRANCHISES, INC., an Ohio corporation; }
 SETH R. DOLE, an individual; and RUTH }
 DOLE, an individual; and DOES 1 through }
 100,
 Defendant.
 MARTIN FRANCHISES, INC., an Ohio }
 corporation,
 Third-Party Plaintiff,
 vs.
 COOPER INDUSTRIES, LTD., a Texas }
 corporation,
 Third-Party Defendant.

Third Party Defendant Cooper Industries, LLC (“COOPER”) amends its answer and responds to the Third Party Complaint of Martin Franchises, Inc. (“Third Party Plaintiff”), as follows:

JURISDICTION AND VENUE

1. COOPER is without sufficient information or belief to admit or deny the allegations in Paragraph 1 and on that basis denies the allegations of Paragraph 1.

2. COOPER is without sufficient information or belief to admit or deny the allegations in Paragraph 2 and on that basis denies the allegations of Paragraph 2.

PARTIES

3. COOPER admits the allegations in paragraph 3.

4. COOPER admits that it is a corporation with its principle place of business in Houston, Texas. COOPER denies the remaining allegations of paragraph 4.

FIRST CAUSE OF ACTION

[Contractual Indemnity]

5. COOPER incorporates by reference its answers and responses to Paragraphs 1 through 4 above as though fully set forth herein.

20 ||| 6. COOPER denies the allegations in paragraph 6.

21 ||| 7. COOPER denies the allegations in paragraph 7.

22 | 8. COOPER admits the allegations in paragraph 8.

23 9. COOPER admits that it has not accepted Third Party Plaintiff's tender
24 of the claim herein. COOPER denies the remaining allegations in paragraph 9.

25 10. COOPER denies the allegations in paragraph 10.

26 | //

27 | //

SECOND CAUSE OF ACTION

[Declaratory Relief]

11. COOPER incorporates by reference its answers and responses to Paragraphs 1 through 10 above as though fully set forth herein.

12. COOPER denies the allegations in paragraph 12.

13. COOPER denies the allegations in paragraph 13.

14. COOPER is without sufficient information or belief to admit or deny the allegations in Paragraph 14 and on that basis denies the allegations in Paragraph 14.

COOPER further alleges the following affirmative defenses in response to the Third Party Complaint:

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Third Party Complaint fails to state a claim upon which relief can be granted.

FIRST AFFIRMATIVE DEFENSE

Under the operative agreement(s) which govern the respective liabilities of Third Party Plaintiff and COOPER with respect to One Hour Martinizing franchises, COOPER has no liability for the franchise at issue in this action.

SECOND AFFIRMATIVE DEFENSE

Under the operative agreement(s) which govern the respective liabilities of Third Party Plaintiff and COOPER with respect to One Hour Martinizing franchises, COOPER has no duty to indemnify Third Party Plaintiff for the claims related to the dry cleaning franchise at issue in this action.

THIRD AFFIRMATIVE DEFENSE

Under the operative agreement(s) which govern the respective liabilities of Third Party Plaintiff and COOPER with respect to One Hour Martinizing

1 franchises, liability for the dry cleaning franchise at issue in this case rests with
2 Third Party Plaintiff.

3 **FOURTH AFFIRMATIVE DEFENSE**

4 There is no agreement or contract or contractual provision between Third
5 Party Plaintiff and COOPER which was entered into on or about 1981 which
6 requires COOPER to provide full written indemnity to Third Party Plaintiff for
7 injuries and/or damages arising out of the operations of the dry cleaning franchise
8 at issue in this action.
9

10 **FIFTH AFFIRMATIVE DEFENSE**

11 Third Party Plaintiff's claims are not ripe.
12

13 **SIXTH AFFIRMATIVE DEFENSE**

14 If COOPER is judged liable for any damages claimed in this Third Party
15 Complaint, such damage should be apportioned among all parties, proportionate to
16 their degree of fault, and any such judgment against COOPER should be reduced
17 or apportioned according to the principles of complete or partial indemnity.

18 **SEVENTH AFFIRMATIVE DEFENSE**

19 COOPER alleges that it is not liable to Third Party Plaintiff because of the
20 subsequent and intervening acts of plaintiff, other defendants, Third Party Plaintiff,
21 third parties and/or acts of God, all of which caused the damages, if any, alleged in
22 the Third Party Complaint.
23

24 **EIGHTH AFFIRMATIVE DEFENSE**

25 COOPER alleges that to the extent Third Party Plaintiff proves that
26 COOPER conducted any of the activities alleged in the Third Party Complaint,
27 those activities conformed with and were pursuant to statutes, government
28 regulations and industry standards based upon the state of knowledge existing at

1 the time of the activities.

2 **NINTH AFFIRMATIVE DEFENSE**

3 COOPER alleges that by virtue of Third Party Plaintiff's unreasonable delay
4 in commencing their claims which delay has caused prejudice to COOPER, certain
5 of the purported causes of action asserted in the Third Party Complaint are barred
6 by the doctrine of laches.

7 **TENTH AFFIRMATIVE DEFENSE**

8 COOPER alleges that if hazardous substances or hazardous wastes as
9 alleged by Plaintiff and/or Third Party Plaintiff leaked or spilled from the property
10 at issue, such leak or spill was of such a minor, trivial or insignificant amount in
11 view of the circumstances surrounding the alleged contamination at the property
12 that no reasonable person would conclude that COOPER created or caused any of
13 the damages alleged in the Third Party Complaint.

14 **ELEVENTH AFFIRMATIVE DEFENSE**

15 COOPER alleges that Third Party Plaintiff has failed to join all persons
16 necessary for a full and just adjudication of the purported causes of action asserted
17 in the Third Party Complaint.

18 **TWELFTH AFFIRMATIVE DEFENSE**

19 COOPER alleges that Third Party Plaintiff's claims are barred by the
20 doctrine of unclean hands.

21 **THIRTEENTH AFFIRMATIVE DEFENSE**

22 COOPER alleges that Third Party Plaintiff cannot prove any facts showing
23 that the conduct of COOPER contributed to disposal of solid or hazardous wastes
24 or hazardous substances as alleged in the First Amended Complaint or Third Party
25 Complaint.

26 **FOURTEENTH AFFIRMATIVE DEFENSE**

27 COOPER alleges that it is not jointly and severally liable for any damage
28 alleged in the Third Party Complaint because any effect of any act or omission of

1 COOPER is divisible and distinct from any compensable damage incurred by
2 Third Party Plaintiff.

3 **FIFTEENTH AFFIRMATIVE DEFENSE**

4 COOPER alleges that Third Party Plaintiff's claims are barred to the extent
5 its costs, if any, were incurred as the result of their violation of regulatory
6 standards or failure to cooperate with public officials.

7 **SIXTEENTH AFFIRMATIVE DEFENSE**

8 COOPER alleges that whatever damage, injury, loss, or expense may be, or
9 may have been, incurred by Plaintiff and/or Third Party Plaintiff under the
10 circumstances and events alleged in the First Amended Complaint and/or Third
11 Party Complaint was solely, directly, and proximately caused, or alternatively,
12 contributed to, by the misconduct, negligence, or wrongful conduct of Plaintiff,
13 other defendants, Third Party Plaintiff or third parties. Therefore, COOPER
14 requests that in the event Third Party Plaintiff recovers against COOPER whether
15 by settlement or judgment, an apportionment of fault be made by the court or jury
16 as to all parties. COOPER further requests a judgment and declaration of
17 indemnification and contribution against all those parties or persons in accordance
18 with the apportionment of fault.

19 **SEVENTEENTH AFFIRMATIVE DEFENSE**

20 COOPER alleges that any damages sustained by Third Party Plaintiff as a
21 result of the incidents described in the Third Party Complaint were caused solely
22 by the negligence, fault, or lack of care on the part of Third Party Plaintiff and/or
23 its agents and were substantially contributed to by the actions or inactions of Third
24 Party Plaintiff and/or its agents. Thus, Third Party Plaintiff's claims must be
25 barred or reduced proportionally based upon that degree by which their and/or their
26 agents' own actions contributed to the alleged injuries or damages.

27 **EIGHTEENTH AFFIRMATIVE DEFENSE**

28 COOPER alleges that, to the extent Third Party Plaintiff proves that

COOPER conducted any matters alleged in the Third Party Complaint, it exercised due care with respect to all such matters.

NINETEENTH AFFIRMATIVE DEFENSE

COOPER alleges that third parties for whom this defendant is not responsible and has no control over failed to maintain the alleged product(s) which Third Party Plaintiff alleges it may have liability for, which liability COOPER specifically denies, in accordance with the manufacturer's recommendations, specifications and instructions.

TWENTIETH AFFIRMATIVE DEFENSE

COOPER alleges that warnings placed on the product(s) or related to the product(s) which Third Party Plaintiff alleges it may have liability for, which liability COOPER specifically denies, are grounds for dismissal of Third Party Plaintiff's claims.

TWENTY-FIRST AFFIRMATIVE DEFENSE

COOPER alleges that the product(s) which Third Party Plaintiff alleges it may have liability for, which liability COOPER specifically denies, was substantially altered or modified by persons for whom COOPER is not responsible, and such alteration or modification was the sole cause of the damages alleged by Third Party Plaintiff in the Third Party Complaint.

TWENTY-SECOND AFFIRMATIVE DEFENSE

COOPER upon information and belief alleges that the product(s) which Third Party Plaintiff alleges it may have liability for, which liability COOPER specifically denies, conformed in all respects to the state of the art at the time it was designed and manufactured, and, as a result, the Third Party Plaintiff is barred from recovery.

TWENTY-THIRD AFFIRMATIVE DEFENSE

COOPER alleges that the product(s) which Third Party Plaintiff alleges it

1 may have liability for, which liability COOPER specifically denies, was not
2 defective in design, defective by manufacture, or defective due to inadequate or
3 insufficient warnings.

4 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

5 COOPER alleges that if Third Party Plaintiff was damaged by any
6 product(s) which it claims COOPER may have liability for, which liability
7 COOPER specifically denies, then Third Party Plaintiff's damages were caused by
8 and attributable to the unreasonable, unforeseeable and inappropriate use which
9 was made of said product(s).

10 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

11 COOPER alleges that the product(s) that Third Party Plaintiff alleges it may
12 have liability for, which liability COOPER specifically denies, performed as safely
13 as an ordinary consumer would reasonably expect when used in an intended or
14 reasonably foreseeable manner.

15 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

16 COOPER alleges that it is not a responsible party or liable person as the
17 same is defined under the Comprehensive Environmental Response, Compensation
18 and Liability Act.

19 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

20 COOPER alleges that it is not a responsible party or liable person as the
21 same is defined under the Resource Conservation and Recovery Act.

22 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

23 COOPER alleges that it is not a responsible party or liable person as the
24 same is defined under the Hazardous Substance Account Act.

25 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

26 COOPER asserts any and all defenses available to it under CERCLA, 42
27 U.S.C. § 9601 et seq.

THIRTIETH AFFIRMATIVE DEFENSE

COOPER asserts any and all defenses available to it under RCRA, 42 U.S.C. 6901 et seq.

THIRTY-FIRST AFFIRMATIVE DEFENSE

COOPER asserts any and all defenses available to it under HSAA, Cal. Health & Safety Code section 25363 et seq.

THIRTY-SECOND AFFIRMATIVE DEFENSE

COOPER asserts all applicable defenses pled by any other defendant to this action, and hereby incorporates the same herein by reference.

THIRTY-THIRD AFFIRMATIVE DEFENSE

COOPER reserves the right to offer additional defenses which cannot now be articulated due to Third Party Plaintiff's failure to particularize its claims or to COOPER's lack of knowledge of the circumstances surrounding Third Party Plaintiff's claims. Upon further particularization of the claims by Third Party Plaintiff or upon discovery of further information concerning its claims, COOPER reserves the right to assert additional defenses.

PRAYER FOR RELIEF

WHEREFORE, COOPER prays for judgment against Third-Party Plaintiff as follows:

1. That Third-Party Plaintiff take nothing by way of this action;
 2. That in the event COOPER is held liable to Third-Party Plaintiff in any manner or fashion whatsoever, that such liability be apportioned among all parties proportionate to each party's degree of fault;
 3. That COOPER be awarded its costs incurred in this action, including attorney's fees; and
 4. That the Court grant such other further relief as it may deem just and proper.

1
2 Dated: July 11 2008
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GORDON & REES LLP

5 By:
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P. Gerhard Zacher
Kristin N. Reyna
Attorneys for Third-Party
Defendant
COOPER INDUSTRIES, LLC

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Gordon & Rees LLP
101 West Broadway, Suite 2000
San Diego, CA 92101

PROOF OF SERVICE

2 Estate of Viola B. Spaulding, et al. v. York Cleaners, Inc., et al.

3 **U.S. Dist. Court (Northern) Case No. C 08-00672 CRB**

4 I am a resident of the State of California, over the age of eighteen years, and not a party
 5 to the within action. My business address is: Gordon & Rees LLP 101 W. Broadway, Suite
 2000, San Diego, CA 92101. On July 11, 2008, I served the within documents:

6 **AMENDED ANSWER OF COOPER INDUSTRIES, LLC TO THIRD PARTY
 7 COMPLAINT OF MARTIN FRANCHISES, INC.**

- 8 by transmitting via facsimile the document(s) listed above to the fax number(s) set
 forth below on this date before 5:00 p.m.
- 9 by personally delivering the document(s) listed above to the person(s) at the
 address(es) set forth below.
- 10 by placing the document(s) listed above in a sealed envelope with postage thereon
 11 fully prepaid, in United States mail in the State of California at San Diego, addressed
 as set forth below.
- 12 X by ELECTRONIC FILING. I caused all of the pages of the above-entitled
 13 document(s) to be electronically filed and served on designated recipients through the
 14 Electronic Case Filing system for the above-entitled case. The file transmission was
 maintained with the original document(s) in our office

15 **SEE ATTACHED SERVICE LIST**

16 I am readily familiar with the firm's practice of collection and processing correspondence
 17 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
 18 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
 motion of the party served, service is presumed invalid if postal cancellation date or postage
 meter date is more than one day after the date of deposit for mailing in affidavit.

19 I declare under penalty of perjury under the laws of the State of California that the above
 20 is true and correct.

21 Executed on July 11, 2008 at San Diego, California.



22
23 LaVerne Hayes
24
25
26
27
28

1
SERVICE LIST
2 Estate of Spaulding v. York Cleaners
Case No. 3:08-CV-00672-CRB

3 ATTORNEY	4 PARTY
<p>Bret Adam Stone John Richard Till Paladin Law Group, LLP 3757 State Street, Suite 201 Santa Barbara, CA 93105 Ph: (805) 898-9700 Fx: (805) 880-0499 Email: bstone@paladinlaw.com jtill@paladinlaw.com</p>	<p>Plaintiffs, Estate of Viola B. Spaulding, Florence Spaulding, trustee, Lynn Spaulding, dba Spaulding Enterprises, Tina Spaulding Ward, dba Spaulding Enterprises, The Conservatorship of Eileen Spaulding and Counter-Defendant, Estate of Viola B. Spaulding</p>
<p>Courtney Marissa Crawford Gregory William Poulos Cox, Wootton, Griffin, Hansen & Poulos LLP 190 The Embarcadero San Francisco, CA 94105 Ph: (415) 438-4600 Fx: (415) 438-4601 Email: ccrawford@cwghp.com groulos@cwghp.com</p>	<p>Defendants, York Cleaners, Inc., Estate of Barnard Lewis, deceased, David Victor Lewis, an individual and Counter-Claimants, David Victor Lewis, an individual, York Cleaners, Inc. and Cross-Complainant, York Cleaners, Inc.</p>
<p>Robert N. Berg Sedwick, Detert, Moran & Arnold LLP One Market Plaza Steuart Tower, 8th Floor San Francisco, CA 94105 Ph: (415) 781-7900 Fx: (415) 781-2635 Email: robert.berg@sdma.com</p>	<p>Defendant, Counter-claimant and Third- Party Plaintiff, Martin Franchises, Inc.</p>